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ED THROUGH

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No.

OLD TOWN YACHT BASIN, INC.,

Petitioner,

v.

CITY OF ALEXANDRIA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

OPINION BELOW

The Order of the Supreme Court of Virginia denying etitioner's Petition for Writ of Error, the Order of the upreme Court of Virginia denying petitioner's Petition or Rehearing and the Order of the Supreme Court of irginia granting Petitioner a Stay are not reported but re appended herewith.

R OUGH

JURISDICTION

The judgment of the Supreme Court of Virginia denying petitioner's Petition for Writ of Error was entered on January 10, 1975. The judgment of the Supreme Court of Virginia denying petitioner's Petition for Rehearing was entered on March 10, 1975. On April 11, 1975, the Supreme Court of Virginia entered an Order Staying Execution of Judgment until June 9, 1975. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257 (3).

CONSTITUTIONAL PROVISION INVOLVED

U.S. CONST., AMEND XIV, Sec. 1.

"... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

QUESTIONS FOR REVIEW

1. The trial court's refusal to consider evidence denying respondent's title to the real estate in question constituted a denial of due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

2. The trial Court's refusal to consider evidence which would have established the paramount title of the United States of America in the real estate in question and petitioner's claim under permit from the United States of America to occupy and use this real estate constituted a denial of due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE

The respondent City of Alexandria, hereinafter referred to as City, instituted an action for rent in the Circuit Court for the City of Alexandria (hereinafter referred to as trial court), alleging ownership of certain waterfront real estate and petitioner's indebtedness to the City in the amount of $7,800 for rent due and unpaid. Based upon statutory authority and historical records, as well as an unequivocal declaration of ownership by the United States of America as set forth in at least two letters from the United States Department of the Interior to petitioner dated January 24, 1973 and May 17, 1973 (App. 3a & 4a), petitioner sought removal of this action to the United States District Court for the Eastern District of Virginia. In an Order entered May 2, 1974 (App. 6a), the District Court ruled that the case was "an action for rent" and the petition for removal was denied.

Thereafter, in the trial court, petitioner sought to defend against the City's claim by demonstrating, *inter alia,* that paramount title to the real estate in question was in the United States of America. In its responsive pleading, petitioner specifically denied the City's claim of ownership. In a further effort to establish its defense through pre-trial discovery, petitioner requested certain admissions concerning documents which clearly demonstrated the paramount title of the United States of America to the property in question. (See Record of Trial, Exhibits B through K attached to Defendant's Request for Admissions of Facts and Genuineness of Documents.) By virtue of the City's failure to contest the genuineness of these documents, their authenticity was admitted.

It is significant to note that during the pendency of this alleged "rent action," title to the land along the

Alexandria waterfront was, and in fact still is, being litigated in the United States District Court for the District of Columbia. That action was brought by the United States Government against all owners of waterfront land. *U.S. v. Herbert Bryant, et al.*, Civil Action No. 2211-73. It should also be noted that on January 29, 1975, an Order was entered in that matter, dismissing numerous defendants, including both petitioner and the respondent (App. 7a).

The instant case came up for trial by jury on June 21, 1974, but on the City's Motion for Summary Judgment, the jury was dismissed and the case was argued to the Court on the pleadings, pre-trial discovery and certain stipulations. However, the trial court refused to consider any of petitioner's evidence establishing the paramount title of the United States as a defense, holding that "the tenant is estopped [sic] the landlord title unless he claims title himself . . . ." (Transcript, June 21, 1974, p. 22) Petitioner's exception to this ruling was noted on the record.

On July 10, 1974, the trial court entered an Order granting the City's Motion for Summary Judgment, entering judgment against petitioner in favor of the City in the sum of $7,800. In that Order (App. 8a), the trial court specifically held that "the defendant Tenant [Petitioner] is estopped to deny the plaintiff Landlord's title unless he claims title in himself, which the defendant has not done . . . ."

After unsuccessfully arguing a motion to vacate the aforementioned judgment, petitioner filed its Notice of Appeal and Assignments of Error to the Supreme Court of Virginia. In this Notice and the briefs subsequently filed in support thereof, petitioner argued, *inter alia*, that

the trial court should have considered evidence concerning the paramount title of the United States of America to the real estate in question.

The petition for writ of error was denied by the Supreme Court of Virginia on January 10, 1975 (App. 1a). Petitioner's request for rehearing was denied on March 10, 1975 (App. 1a).

REASONS FOR GRANTING THE WRIT

I.

THE TRIAL COURT'S REFUSAL TO CONSIDER EVIDENCE DENYING RESPONDENT'S TITLE TO THE REAL ESTATE IN QUESTION CONSTITUTED A DENIAL OF DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

In defining a litigant's rights under the Fourteenth Amendment to the Constitution, this Court has held that the due process clause guarantees to each litigant a full hearing and the right to introduce evidence. *Baltimore & O.R. Co. v. United States,* 298 U.S. 349, 80 L.Ed. 1209, 56 S.Ct. 797 (1936). This right clearly encompasses the litigant's right to be heard in its defense. *Brinkerhoff-Faris Trust & Savings Co. v. Hill,* 281 U.S. 673, 74 L.Ed. 1107, 50 S.Ct. 451 (1930). While it is obvious that this right is not absolute, but rather one limited to the introduction of evidence relevant to the subject of the litigation, where the law on the subject is clear and the trial court persists in its refusal to permit evidence in support of a defense, the due process rights of the litigant are violated. *See Country Club Tower Corp. v. Tower Management Corp.,* 275 F. Supp. 468 (D. Mont. 1967).

It is traditionally held that where the relationship of landlord and tenant has been once established, the tenant is estopped to deny his landlord's title in any action brought against him by the landlord to vindicate his rights under the tenancy. 49 Am. Jur.2d *Landlord and Tenant* §109 *et seq.* This is the general state of the law in Virginia. 11 Michie's Jurisprudence, *Landlord and Tenant* §61. However, in Virginia, as in most other jurisdictions, the rule is fraught with exceptions. The landlord's title may be challenged after the tenant has relinquished possession (*Emerick v. Tavener,* 9 Gratt. [50 Va.] 220 (1852); *Stover v. Davis,* 57 W. Va. 196, 49 S.E. 1023 [1905]) or disclaimed or disavowed the landlord's title. *Matthews v. W. T. Freeman Co.*, 191 Va. 385, 60 S.E.2d 23 (1950). In such a case the tenant may claim the fee in himself or a third person. *Voss v. King,* 33 W. Va. 236, 10 S.E. 402 (1889). Most significantly, if the tenant is threatened with a suit upon a paramount title, the threat, under such circumstances, may be equivalent to an eviction, and the tenant may thereupon submit in good faith and attorn to the party holding valid title. *Turbin v. Saunders,* 32 Gratt. (73 Va.) 27. (1879)

In light of the clear authority which should permit petitioner to defend in the action below by demonstrating the existence of title in someone other than the City and its claim under their title, the action of the trial court in denying petitioner the right to introduce evidence of such paramount title and its claim thereunder constituted a denial of due process of law.

II.

THE TRIAL COURT'S REFUSAL TO CONSIDER EVIDENCE WHICH WOULD HAVE ESTABLISHED THE PARAMOUNT TITLE OF THE UNITED STATES OF AMERICA IN THE REAL ESTATE IN QUESTION AND PETITIONER'S CLAIM UNDER PERMIT FROM THE UNITED STATES OF AMERICA TO OCCUPY AND USE THIS REAL ESTATE CONSTITUTED A DENIAL OF DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

In addition to the previously cited authority, public policy alone should permit a defense based upon title. In an action brought by the landlord to establish his right in certain crops and to enjoin the tenant from removing and selling same, the tenant was permitted to defend by refuting the landlord's authority. The court observed:

> "If land is public land—the title in the government—a tenant is not bound by the ordinary rule which forbids him to dispute his landlord's title. * * * On the contrary, he may show the title to be in the government. It would be against public policy to hold otherwise. *Ellis v. Sutton,* 126 Miss. 102, 88 So. 519, 521 (Sup. Ct. Miss. 1921)"

See also Weilder v. McComb, Civ. App. 85, 30 S.W. 822 (Tex. Civ. App. 1895).

Similarly, in the case of *City Council of Greenville v. White,* 194 Miss. 145, 11 So.2d 818 (Sup. Ct. Miss. 1943), the court held:

> "When the title of the property in controversy is in the government, the alleged tenant or licensee of someone else is not bound by the rule which forbids him to dispute the title of him by whose permission he enters upon the premises, since to so hold would be violative of public policy."

Clearly, the trial court's refusal to consider matters of public policy does not, in and of itself, constitute a denial of due process sufficient to raise a "substantial Federal question." However, in light of clear case law holding the real estate in question to be the property of the United States (*Morris v. United States*, 174 U.S. 196, 43 L.Ed. 946, 19 S.Ct. 649 [1899]; *Smoot Co. v. Washington Airport*, 283 U.S. 348, 75 L.Ed. 1109, 51 S.Ct. 474 [1931]; *United States v. Dern*, 289 U.S. 352, 77 L.Ed. 1245, 53 S.Ct. 611 [1933]), the trial court's refusal to permit the introduction of any evidence on this point does constitute a denial of due process and raise a substantial federal question. *See Graham v. Gill*, 223 U.S. 643, 56 L.Ed. 586, 32 S.Ct. 396 (1912); *Cissna v. Tennessee*, 246 U.S. 289, 62 L.Ed. 720, 38 S.Ct. 306 (1918).

In *Lear v. Adkins*, 395 U.S. 653, 23 L.Ed.2d 610, 89 S.Ct. 1902 (1969), this Court reversed previous holdings that the defense of patent invalidity was unavailable to a company in a suit for royalties brought by an inventor. In holding that the doctrine of estoppel in such cases was violative of federal policy, the Court noted that to do otherwise "would be inconsistent with the aims of federal patent policy . . . ." *Lear*, 395 U.S. at 673. To deny it the right to assert the paramount title of the United States of America as the granting authority by which petitioner occupies the real estate in question would result in an equally flagrant violation of public policy, a rejection of this Court's previous rulings regarding title to the real estate in question, and a denial of petitioner's constitutionally guaranteed right to due process of law.

CONCLUSION

For these reasons, a Writ of Certiorari should issue and the decision of the Supreme Court of Virtinia should be reversed

Respectfully submitted,

DAVID ROSS ROSENFELD
118 South Royal Street
Post Office Box 96
Alexandria, Virginia 22313
(703) 548-2600

Attorney for Petitioner.

APPENDIX A

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 10th day of January, 1975.

The petition of Old Town Yacht Basin, Inc., for a writ of error and supersedeas to judgments rendered by the Circuit Court of the City of Alexandria on the 10th day of July, 1974, and the 11th day of September, 1974, respectively, in a certain motion for judgment then therein depending, wherein the City of Alexandria, etc., was plaintiff and the petitioner was defendant, having been maturely considered and a transcript of the record of the judgments aforesaid seen and inspected, the court being of opinion that there is no reversible error in the judgments complained of, doth reject said petition, and refuse said writ of error and supersedeas, the effect of which is to affirm the judgments of the said circuit court.

A Copy,
Teste:
Howard G. Turner, Clerk
By: /s/Allen L. Leary
Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 10th day of March, 1975.

Old Town Yacht Basin, Inc., Plaintiff in error,
against Record No. 741082
City of Alexandria, Defendant in error.

Upon a Petition for Rehearing

On mature consideration of the petition of the plaintiff in error to set aside the judgment rendered herein on the 10th day of January, 1975, and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,
Teste:
/s/ H. Turner
Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 11th day of April, 1975.

Old Town Yacht Basin, Inc., Plaintiff in error,
against Record No. 741082
City of Alexandria, Defendant in error.

Order Staying Execution of Judgment

Upon consideration of the application of the plaintiff in error, by counsel, praying for a stay of execution of the judgment rendered herein on March 10, 1975, in order that it may have reasonable time and opportunity to present to the Supreme Court of the United States a petition for appeal to review the judgment of this court, it is now ordered that the execution and enforcement of the judgment of this court in the above-entitled case rendered on March 10, 1975, be, and the same is hereby, stayed, until the 9th day of June, 1975, on the expiration of which time the same may be enforced, unless before that time a notice of appeal to the Supreme Court of the

United States has been filed in accordance with the Rules of the Supreme Court of the United States and the case is thereafter docketed within the time provided by the Rules of that court, in which event enforcement thereof shall be stayed until the final determination of the case by that court.

A Copy,
Teste:
/s/ H. Turner
Clerk

United States Department of the Interior
Office of the Secretary
Washington, D.C. 20240

In Reply Refer To:
L2415-LA

Jan. 24, 1973

Dear Mr. Lang:

This will respond to your telephone inquiry concerning the real property ownership of the United States in the area of the waterfront of Alexandria.

Please be advised that the United States is the owner of all fast and submerged lands lying easterly of the high-water mark of 1791. In the vicinity of the area presently occupied by you, it encompasses all lands easterly of Union Street between Wilkes Street and Gibbon Street. Persons who are claiming lands owned by the United States in that area include Pommander Walk, a limited partnership; the City of Alexandria; Southern

Railway; and your corporation. As to these lands, which are east of the high-water mark of 1791, the United States is the fee owner.

We trust this information will be of assistance to you.

Sincerely yours,

/s/Sgd. Curtis Bohler
Deputy Assistant Secretary for
Fish and Wildlife and Parks

Mr. J. G. Lang, Jr.
President, Old Town Yacht Basin, Inc.
500 South Union Street
Alexandria, Virginia 22314

United States Department of the Interior
Office of the Secretary
Washington, D.C. 20240

In Reply Refer To:
L2415-LA May 17, 1973

Gentlemen:

The lands presently occupied by you, easterly of Union Street between Wilkes Street and Gibbon Street are, by virtue of the cession from the State of Maryland for the seat of government, owned by the United States of America and are under the jurisdiction of the Department of the Interior.

This will authorize your corporation to continue the occupancy of those lands for the purpose of operating a marina and related facilities. This permission may be

revoked by us at any time without prior notice and shall not be deemed as vesting in you any interest in the land or facilities which presently exist in the area described.

You are not to undertake any permanent improvements or major construction activities in the area without the approval of the Director, National Capital Parks, National Park Service, 1100 Ohio Drive, S. W., Washington, D. C. His representative will contact you shortly to discuss the possibility of a concession agreement for the operation of a marina in that area, and an appropriate interim fee.

Any questions concerning this matter should be addressed to the Director, National Capital Parks, National Park Service.

Sincerely yours,

/s/[Illegible]
Assistant Secretary of the
Interior

Old Town Yacht Basin, Inc.
500 South Union Street
Alexandria, Virginia 22314

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(ALEXANDRIA DIVISION)

OLD TOWN YACHT BASIN, INC.	:	
Petitioner,	:	
v.	:	NO. 106-74
CITY OF ALEXANDRIA, a	:	
municipal corporation of	:	
Virginia,	:	
Respondent.	:	

ORDER

THIS CAUSE came on to be heard upon the Petition for Removal filed by Old Town Yacht Basin, Inc., upon the Motion to Remand in Response to Petition for Removal filed by the City of Alexandria, and was argued by counsel

AND IT APPEARING TO THE COURT that the original cause of action filed by the City of Alexandria against Old Town Yacht Basin, Inc. in the Circuit Court for the City of Alexandria, Virginia, being an action for rent, should not be removed to this Court under the provisions of Title 28, U.S.C., it is therefore

ORDERED, ADJUDGED AND DECREED, that the captioned case be and it hereby is remanded to the Circuit Court for the City of Alexandria, Virginia, for further proceedings in accordance with the pleadings filed therein.

ENTERED this 2nd day of May, 1974.

/s/[Illegible]
JUDGE

IN THE UNITED STATES
DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

HERBERT BRYANT, INC., et al.,
Defendants.

CIVIL ACTION
NO. 2211-73

ORDER FOR FINAL JUDGMENT

On the prior memorandum and order having been entered herein on December 9, 1974 dismissing the complaint for lack of jurisdiction as to all defendants owning property in the Commonwealth of Virginia, it appearing to the Court that there is no just reason for delay in entering final judgment on defendants' motions to dismiss, it is pursuant to Rule 54(b) of the Federal Rules of Civil Procedure,

ORDERED that final judgment be entered herein dismissing the complaint as to defendants Thomas H. Andrews, Inc.; Norton and Company, Inc.; The Texas Company; Robinson Terminal Warehouse Corporation; Kristos Kiriakow and Anna Kiriakow; Leroy S. Bendheim; Max Ratner; Charcoal House, Inc.; Old Dominion Boat Club; Sand & Gravel Properties, Inc.; Robinson Realty Corporation; Potomac Arms Corporation; John C. Richards; Beverly D. Turner; Donald C. Wells; Chester G. Pierce; Herbert W. O'Meara; Russell S. Crenshaw; Flavienne G. Crenshaw; Alexandria Service, Incorporated; Virginia Electric and Power Company; Old Town Yacht Basin, Inc.; Roy C. Bragg; Herbert S. Billowitz; Southern Railway Company; Pommander Walk Limited Partner-

ship; MCE Corporation; United Virginia Bank/First & Citizens National Bank; and City of Alexandria.

An order of dismissal is not entered at this time with respect to the following defendants: Commonwealth of Virginia; Herbert Bryant Incorporated; Potomac Electric Power Company; Slater's Lane, Inc.; A. Slater Lamond; and Jaquelin R. S. Lamond.

Dated: Jan. 29, 1975 /s/[Illegible]
United States District Judge

VIRGINIA:

IN THE CIRCUIT COURT
OF THE CITY OF ALEXANDRIA

CITY OF ALEXANDRIA, a municipal corporation of Virginia, :
Plaintiff, :
v. : At Law No. 2449
OLD TOWN YACHT BASIN, INC., :
Defendant. :

ORDER

THIS CAUSE came on to be heard on the 21st day of June 1974, upon the Motion for Judgment for Rent with Exhibits filed by plaintiff herein, upon the Grounds of Defense, Amended Grounds of Defense and Counterclaim filed by the defendant filed, upon the Answer to Counterclaim filed by plaintiff, upon a Request for Admission of Facts and Genuineness of Documents by plaintiff, upon the defendant's Response to said Request, upon a Request for Admission of Facts and Genuineness of Documents by defendant, upon the plaintiff's oral

response in open Court to said Request, upon the Motion for Summary Judgment by plaintiff, upon the stipulations by plaintiff and defendant, and was argued by counsel.

AND IT APPEARING TO THE COURT that the lease dated March 29, 1956, and recorded in Deed Book 430 at page 27 among the land records of the City of Alexandria, Virginia, entered into by the defendant's predecessors and the plaintiff, and assigned to the defendant with consent to the assignment by the plaintiff, expired on March 29, 1966; that negotiations toward a new rental agreement continued between plaintiff and defendant through June 1968; and that payments of rent in the amount of ONE DOLLAR ($1.00) per year were made thereafter on April 1, 1966, April 1, 1967, and May 13, 1968, and that such payments did not create an extension or renewal of the lease on a year to year basis;

AND IT FURTHER APPEARING TO THE COURT that on July 1, 1968, the plaintiff and defendant agreed to a tenancy from month to month at a rental in the sum of THREE HUNDRED DOLLARS ($300.00) per month by virtue of a letter dated June 17, 1968, marked plaintiff's Exhibit B and defendant's payment of the rent demanded commencing on July 1, 1968, and continuing through November 1971, all rent being current through November 1971; and that rent is due and owing the City for defendant's use and occupancy of the City owned land for December 1971 through January 1974, in the sum total of SEVEN THOUSAND EIGHT HUNDRED DOLLARS ($7,800.00);

AND IT FURTHER APPEARING TO THE COURT that the defendant Tenant is estopped to deny the plaintiff Landlord's title unless he claims title in himself, which the defendant has not done;

AND IT FURTHER APPEARING TO THE COURT that there is no question of fact to be determined by the jury; therefore, it is hereby

ADJUDGED, ORDERED and DECREED that the plaintiff's Motion for Summary Judgment for Rent in the sum total of SEVEN THOUSAND EIGHT HUNDRED DOLLARS ($7,800.00) is granted and the defendant's Counterclaim is dismissed. The Court hereby notes that plaintiff and defendant agree that the sum of $300 is to be credited to the defendants account.

AND IT IS SO ORDERED this 10th day of July 1974.

/s/[Illegible]
J U D G E
JLD 23, page 93

SEEN:
/s/ J. Howard Middleton, Jr.
J. Howard Middleton, Jr.
Assistant City Attorney
Counsel for Plaintiff

SEEN AND EXCEPTION HEREBY NOTED:

LUTZ & KAVALJIAN

/s/Herman W. Lutz
Herman W. Lutz
Counsel for Defendant